

## REMARKS

The outstanding non-final Office Action mailed September 27, 2004 (Part of Paper No. 4) has been carefully considered. In response thereto, please enter the following amendments in which claims 1, 11 and 20 are amended and claims 27-33 are added. Claims 1-33 are now pending in the present application. Reconsideration and allowance of the application and presently pending claims, as amended, are respectfully requested.

### Response to 35 U.S.C. 103(a) Rejections

The Office Action states that claims 1-19 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Costanzo* (U.S. Patent No. 6,494,312), hereinafter referred to as *Costanzo*, in view of *Takino et al.* (U.S. Patent No. 6,073,747), hereinafter referred to as *Takino*, or *Itoh et al.* (U.S. Patent No. 6,382,393), hereinafter referred to as *Itoh*. Applicant respectfully traverses this rejection for at least the reason that *Costanzo* in view of *Takino* or *Itoh* fail to teach all of the elements of claims 1-19 and 21-24.

In order to make a proper *prima facie* case of obviousness; three basic criteria must be met, as set forth in MPEP 706.02(j). First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine referenced teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure.

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the prior art reference must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

#### Claims 1-10

Applicant respectfully submits that claim 1, as amended, is allowable over *Costanzo* in view of *Takino* or *Itoh* for at least the reason that *Costanzo* in view of *Takino* or *Itoh* do not disclose, teach or suggest all elements in claim 1, as amended. Specifically, *Costanzo* in view of *Takino* or *Itoh* do not disclose, teach or suggest “at least one second roller **that extends in a direction of travel of the modular conveyor belt and that can operatively couple to the plurality of first rollers**”. (*Emphasis added.*) For example, *Costanzo* appears to teach a modular roller top conveyor belt with obliquely arranged rollers but does not teach a second roller operatively coupled with the belt rollers. *Takino* appears to teach a sorting apparatus having sorting rollers driven by a line shaft or roller. The line shaft or roller appears to extend perpendicular to the direction of travel and is driven by an independent motive source. *Itoh* appears to teach transversely directed sorting rollers that rise to engage drive rollers, where the drive rollers extend in a direction perpendicular to the direction of travel. Although *Costanzo* does teach the roller top conveyor belt, neither *Takino* nor *Itoh* teach Applicant’s “second roller that extends in a direction of travel”.

The ‘472 patent to *Klint*, as discussed in the Examiner interview, appears to teach a conveyor for advancing and orienting eggs that features supporting rollers and a cylindrical gear wheel, all having axes parallel to the direction of travel. *Klint* does not teach a roller top conveyor belt and one of ordinary skill in the art would not be motivated to combine *Klint* with any of *Costanzo*, *Takino* or *Itoh*.

Accordingly, Applicant respectfully submits that dependent claims 2-10 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. For at least these reasons, Applicant respectfully submits that the rejection of claims 1-10 should be withdrawn.

#### Claims 11-19

Applicant respectfully submits that claim 11, as amended, is allowable over *Costanzo* in view of *Takino* or *Itoh* for at least the reason that *Costanzo* in view of *Takino* or *Itoh* do not disclose, teach or suggest all elements in claim 11, as amended. Specifically, *Costanzo* in view of *Takino* or *Itoh* do not disclose, teach or suggest “at least

one second roller **that extends in direction of the linear motion**". (*Emphasis added.*) For at least the reasons identified with respect to claim 1, Applicant respectfully submits that claim 11 is allowable over the cited references. Accordingly, Applicant respectfully submits that dependent claims 12-19 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 11. For at least these reasons, Applicant respectfully submits that the rejection of claims 11-19 should be withdrawn.

#### Claims 21-24

The Office Action indicates that claims 21-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Costanzo* in view of *Takino* or *Itoh*. Applicant respectfully submits that dependent claims 21-24 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 20, as amended. For at least this reason, Applicant respectfully submits that the rejection of claims 21-24 should be withdrawn.

#### Response to 35 U.S.C. 102(b) Rejections

The Office Action states that claims 20, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by *Costanzo*. Applicant respectfully traverses this rejection for at least the reason that *Costanzo* fails to teach, disclose or suggest all of the elements of claims 20, 25 and 26.

A proper rejection of a claim under 35 U.S.C. §102(b) requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ 2d 1655. (Fed. Cir. 1990.)

#### Claim 20

Applicant respectfully submits that claim 20, as amended, is allowable over *Costanzo* for at least the reason that *Costanzo* does not disclose, teach or suggest all elements in claim 20, as amended. Specifically, *Costanzo* does not disclose, teach or suggest "at least one second roller that has **an axis that is parallel to the direction of**

**belt travel, wherein the driving of the modular conveyor belt produces rotary motion in the plurality of first rollers and the at least one second roller** as a result of their operative coupling”. (*Emphasis added.*) In contrast with Applicant’s claim 20, *Costanzo* appears to teach a modular roller top conveyor belt constructed of hinge interlocked belt modules and rollers in cavities of the belt without any form of a second roller. For at least this reason, Applicant respectfully submits that the rejection of claim 20, as amended, should be withdrawn. Further, Applicant respectfully submits that dependent claims 25 and 26 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 20, as amended.

#### Claims 25 and 26

The Office Action indicates that claims 25 and 26 stand rejected under 35 U.S.C. 102(b) as being unpatentable over *Costanzo*. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600. (Fed. Cir. 1988.) For at least this reason, Applicant respectfully submits that the rejection of claims 25 and 26 should be withdrawn.

#### New Claims

Claims 27-33 have been newly added to further define and/or clarify the scope of the invention.

Applicant respectfully submits that new independent claim 31 is allowable over the cited references for at least the reason that the cited references do not disclose, teach or suggest all elements in new claim 31. Specifically, the cited references do not disclose, teach or suggest “at least one second roller, that extends in direction of the linear motion and is located under one of the plurality of rows”. For at least this reason, Applicant respectfully submits that claim 31 is allowable.

Applicant respectfully submits that new claims 32 and 33 are allowable over the cited references for at least the reason that these claims depend from new allowable independent claim 31. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600. (Fed. Cir. 1988.)

#### Response to 35 U.S.C. 112, Rejections

The Office Action states that claims 21-24 are rejected under 35 U.S.C. 112, second paragraph, for being indefinite due to the lack of a proper antecedent for “second roller”. Applicant respectfully submits that the amendment to independent claim 20 corrects this deficiency. For at least this reason, Applicant respectfully submits that the rejection of claims 21-24 should be withdrawn.

#### Response to 35 C.F.R. 1.83(a) Objection

The Office action states that the drawings are objected to under 35 C.F.R. 1.83(a) because the drawings must show every feature of the invention specified in the claims. Specifically, the Office Action states that the displacement means of claims 8 and 18 must be shown in the drawings or the features must be canceled from the claims. Applicant respectfully traverses this objection on the basis that the subject matter of claims 8 and 18 is understandable by one of ordinary skill in the art without a drawing.

The requirement for a drawing in a patent application only exists where a drawing of his or her invention is *necessary* for the understanding of the subject matter sought to be patented. See 35 U.S.C. §113; 35 C.F.R. §1.81.

Applicant respectfully submits that the subject matter of claims 8 and 18 does not require a drawing for one of ordinary skill in the art to understand the subject matter of the claims. For example, one of ordinary skill in the art will know the function and general appearance of devices such as an air actuator, a hydraulic actuator, a ball screw actuator, and a solenoid actuator. Further, one of ordinary skill in the art will know how to implement such a device in the context of the disclosure for achieving vertical displacement. For at least this reason, Applicant respectfully submits that the objection under 35 C.F.R. 1.83(a) should be withdrawn.

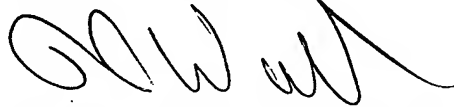
#### Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-33 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

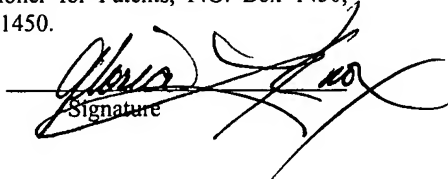


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